

*litis*, this might be granted ; but refused it as to principal writs, which could not be refused to parties, except where they were quarrelled as false.

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1692. *December 29.* MAJOR HEW BUNTAIN *against* The EARL OF ABERDEEN.

MAJOR HEW BUNTAIN against the Earl of Aberdeen ; who ALLEGED he should have applied to the King or Treasury, in 1682, and gotten payment of his dues for his service, and cannot recur now against the Earl, who uplifted them by warrant of the King's letter.

The Lords found it relevant for Major Buntain to prove, that it was the custom of the keepers of the Great Seal to get the third of the Chancellor's dues, and that this was a distinct perquisite of the office from furnishing the war, and appending the Seal ; and admitted to his probation, that the Earl of Aberdeen uplifted this from Enterkine, *scripto vel juramento*. Some of the Lords inclined to modify to less, in regard Major Buntain was then at no trouble, whereas in the Duke of Rothes's time, he was a domestic, and did other services for it.

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1692. *December 29.* MACKMICHAH *against* ADAIR.

MACKMICHAH contra Adair. The Lords remitted the cause, with this instruction that the pursuer should prove *quomodo desiit possidere*, whether by stealing, straying, or the like ; that it may appear it was not by a sale, donation, or the like titles transmitting dominion ; and farther proving that the horse was in the defender's possession the time of the citation, or that he *dolo desiit possidere* before. For if they had transmitted him before the citation, then the *rei vindicatio* ceased, he being no more possessor.

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1692. *November 30 and December 30.* ROBERT STEWART of Innerwhat, *against* The MASTER OF SALTON.

*Nov. 30.*—ROBERT STEWART of Innerwhat, messenger, contra the MASTER OF SALTON ; the Lords found the letters not obligatory upon the Master to pay the sum ; but that they imported thir two things ; *1mo*, That he ought to have large damages modified to him for his expenses. *2do*, That the Master ought not to protect his grandfather's person, nor his liferent against this debt of Messie's, by the gift of the liferent escheat, or any other right standing in his person.

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*December 30, 1692.*—Robert Stewart, messenger, against the Master of Salton, mentioned 30th Nov. 1692. The Lords having considered the condescence of his damage given in, they inclined to think the sum was included, and due *nomine damni*; but in regard they had already found the letters not obligatory on the Master to pay the sum; therefore they declared the import of the letters to be this, that he should not make use of the gift of his grandfather's liferent-escheat, or any other right in his person, to exclude or debar Stewart from payment. For having promised to endeavour his payment, he could not obtrude any right in his person to obstruct it; and found if he had hitherto stopped his access to his grandfather's liferent-lands, then he should be simply liable, and also found him liable by the letters *in quantum* he was *lucratus* by the sale of Auchirie's, above what paid Jameson of Parkmur's debt; some inclined to make him simply liable, because by the gift of escheat he had intromitted with more than would pay this debt of Mr Andrew Massie's; but the Lords by a plurality made it only *a non repugnantia*, and that the bygone were *fructus bona fide percepti*. But even as to the liferent in time coming, those in the back-bond may say, they will not let the rents appointed for their payment be misapplied to Stewart's debts, and the grandfather may die before a second gift is obtained, to frustrate Stewart's payment.

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1692. *December 30.* SIR ROBERT BAIRD *against* The EARL OF ABERDEEN.

SIR ROBERT BAIRD against the Earl of Aberdeen. The Lords preferred the Earl's right upon the disposition; and found Sir Robert Baird's adjudication, being against Arthur Udney, before he had any right, (Jack, his mother-in-law, and the proprietor of these fishings being then alive,) it could convey to Sir Robert no right; and that the supervenient title of his being husband to the apparent heir, after Jack's death, could not access to Sir Robert, because *jus accrescendi* did more take place in voluntary rights than in legal diligences of adjudication, or the like. And so they moved the second ground, *viz.* That Arthur Udney never had right *jure mariti*, the same being excluded by his good-mother's disposition to Margaret Douglas, her daughter, and Arthur's wife, in liferent, and to Arthur's children by her in fee, with seclusion of his *jus mariti*, and creditors from any interest in it. Which the Lords had sustained in the year 1691, in George Lawson's process against the said Arthur.

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1693. *January 3.* DUKE OF HAMILTON *against* HAMILTON of Wishaw.

IN the cause between the Duke of Hamilton, and William Hamilton of Wishaw; the Lords considered, though the years of the taxation expired in 1671, yet there were several arrears to be ingathered, which were not brought in for some time thereafter; which made it necessary to keep still the taxation chamber; and found the Duke liable for the mail of it from Whitsunday 1672, to Whitsunday 1676,